

**JOINT LEGISLATIVE HEALTH CARE
OVERSIGHT COMMITTEE**



**REPORT TO THE 1999 GENERAL ASSEMBLY
(2000 REGULAR SESSION)**

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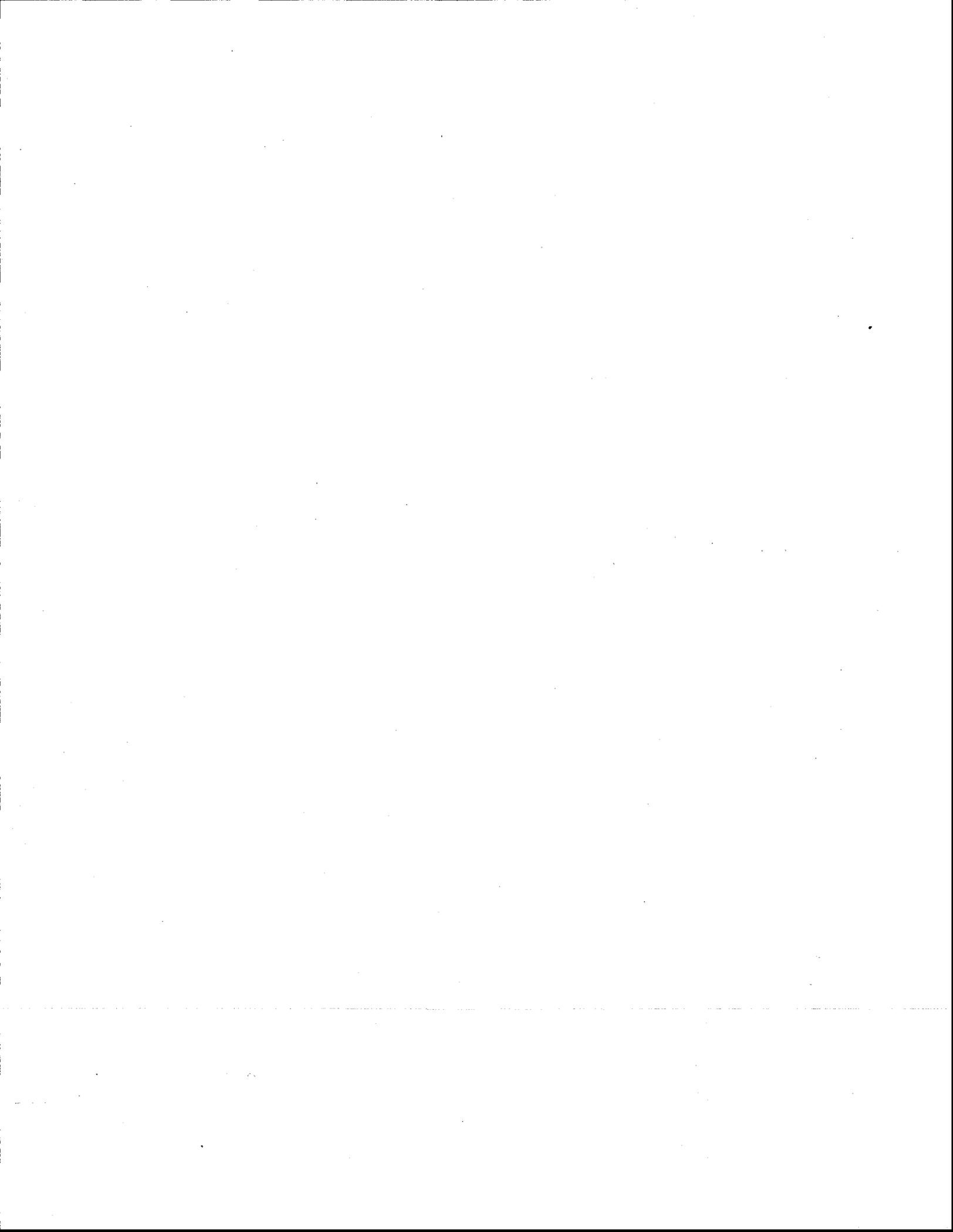
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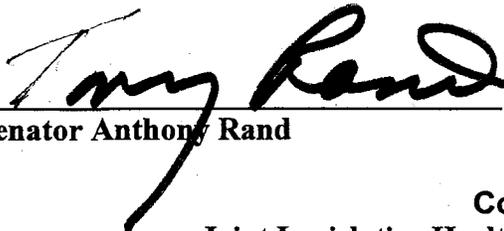


May 1, 2000

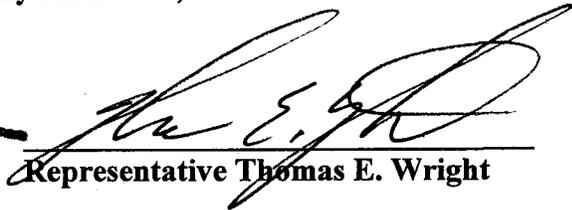
**TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY
(REGULAR SESSION 2000):**

The Joint Legislative Health Care Oversight Committee herewith submits to you for your consideration its report pursuant to G.S. 120-70.111(b).

Respectfully submitted,

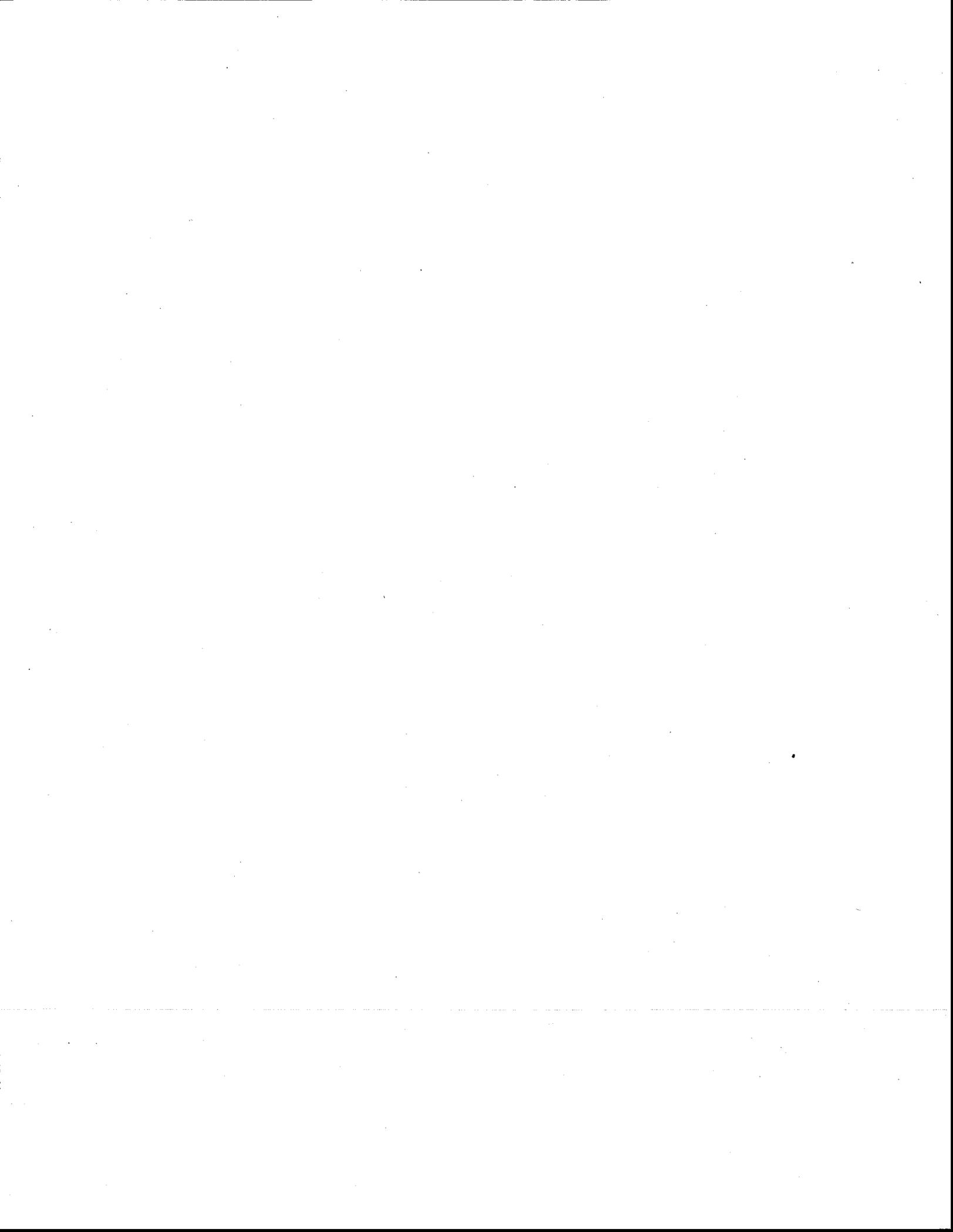


Senator Anthony Rand



Representative Thomas E. Wright

**Co-Chairs
Joint Legislative Health Care Oversight Committee**



**Membership
1999-2000**

SENATE APPOINTEES

Senator Anthony Rand, Co-Chair

Senator James Forrester

Senator Wib Gulley

Senator Fletcher L. Hartsell, Jr.

Senator Jeanne H. Lucas

Senator Beverly Perdue

Senator William R. Purcell

Senator Robert Rucho

HOUSE APPOINTEES

Representative Thomas Wright, Co-Chair

Representative Zeno Edwards

Representative Verla Insko

Representative Larry Justus

Representative Edd Nye

Representative Wilma Sherrill

Representative William Wainwright

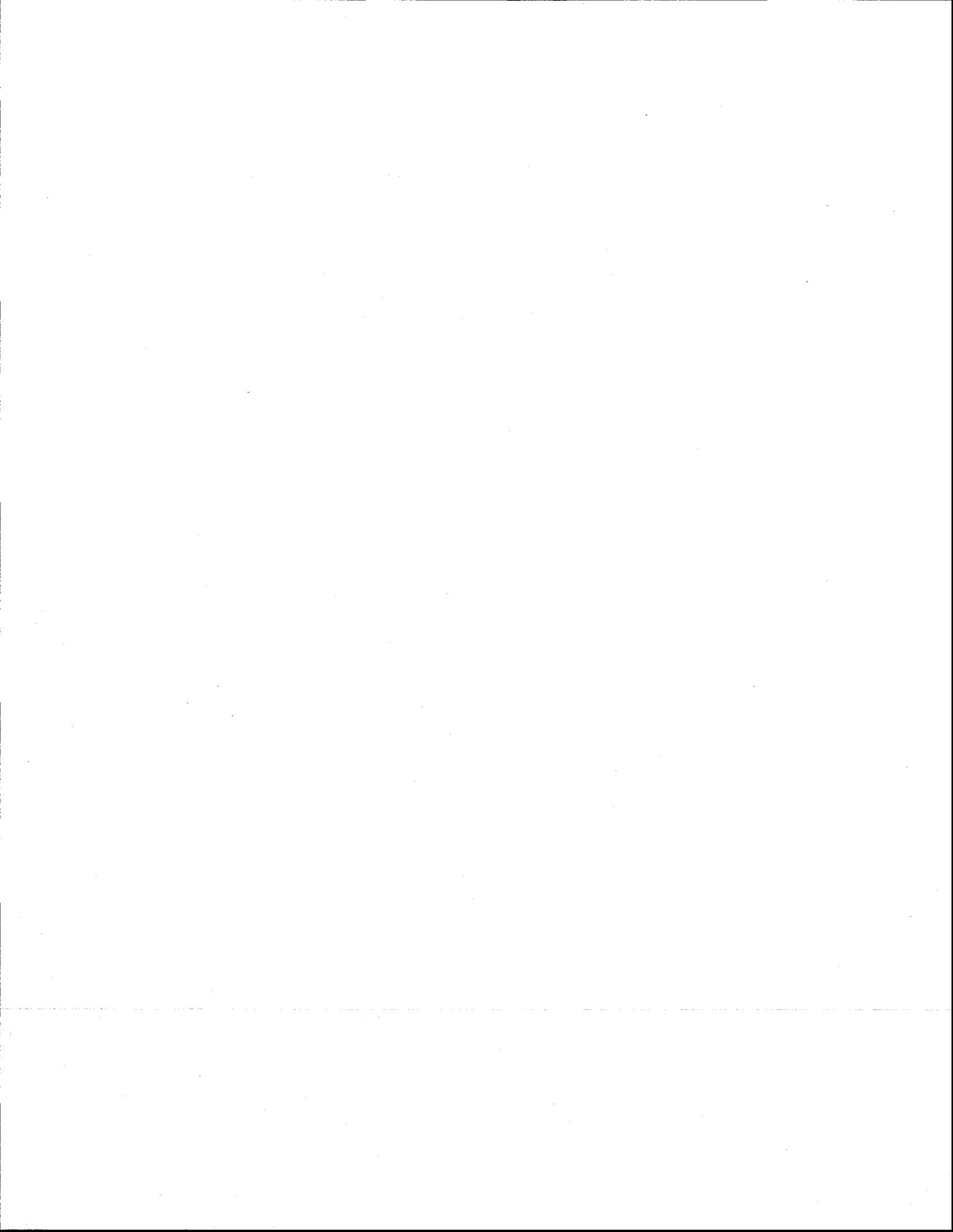
Rep. Stephen Wood

Committee Staff

Linda Attarian, Committee Counsel

John Young, Committee Staff

**Vanda Wilson-Wormack, Committee
Assistant**



PREFACE

The Joint Legislative Health Care Oversight Committee was established by Section 22.1 of S.L. 1997-443 (SB 352) as Article 12 M of Chapter 120 of the General Statutes to "review, on a continuing basis, the provision of health care and health care coverage...in order to make...recommendations to the General Assembly...[and to]...study the delivery, availability and cost of health care in North Carolina" and related matters. A copy of the statute is found in Appendix A.

The Committee consists of sixteen members of the General Assembly, eight members of the Senate appointed by the President Pro Tempore of the Senate and eight members of the House of Representatives appointed by the Speaker of the House. Each of the appointing authorities designates one of the appointees to serve as co-chair. The Committee is co-chaired by Senator Anthony E. Rand and Representative Thomas E. Wright. A complete list of members is found on page ii.

Besides its regular statutory tasks, the Committee was assigned two other issues by S.L. 1999-334 (SB 10) for the Committee's analysis and recommendations to be reported to the 1999 General Assembly (2000 Regular Session). Section 3.14 of S.L. 1999-334 requires the Committee to study whether the Health Care Personnel Registry is working effectively and shall recommend any changes needed to improve its effectiveness. In conducting its study the Committee shall consider the following:

- (1) The extent to which employers of health care personnel subject to listing in the Registry are complying with statutory requirements to report incidents to the Registry.
- (2) The extent to which employers of health care personnel subject to listing in the Registry are contacting the Registry before making hiring decisions to ascertain if applicants are listed in the Registry.
- (3) Whether the scope of the Registry should be expanded to cover other types of health care personnel or health care facilities.
- (4) Other issues relating to the Health Care Personnel Registry.

Section 3.14 of S.L. 1999-334 also requires the Committee to study whether the requirements and procedures for criminal history record checks on applicants for employment in adult care homes should be strengthened, expanded, or changed.

PROCEEDINGS

During the 1999-2000 fiscal year, the Committee met twice prior to reporting to the 1999 General Assembly (2000 Regular Session), on April 13th and April 25th. The first meeting on April 13th was devoted to orientation and organization. Information was provided on the study topics and issues referred to the Committee by S.L. 1999-334 (SB 10). It was determined by the Co-chairs and the Committee that at least the following topics should be considered at the next meeting on April 25th.

- Criminal history record checks for applicants for employment in adult care homes;
- Health care personnel orientation and issues; and
- Update on nurse licensure compact.

Therefore, on April 25th the topics below, along with the issue of state employee health care coverage for treatment of mental illness and chemical dependency in foster care, were considered by the Committee.

Health Care Personnel Registry

The 1996 General Assembly required the establishment of the Health Care Personnel Registry within the Department of Health and Human Services. At that time, the responsibility of DHHS, Health Care Personnel Registry Section was expanded from having limited regulatory authority for monitoring nurse aides working in nursing homes to include other unlicensed health care personnel working in other types of licensed health care facilities. In 1998 and again in 1999, legislative action broadened the scope of responsibility and expanded facility reporting requirements. The results of these three expansions were the addition of over 5,500 facilities, seven new types of allegations and three new types of unlicensed personnel under the program's investigative authority.

The statute requires the investigation of all allegations of: (1) resident abuse or neglect, (2) misappropriation of resident or faculty property, (3) fraud against a resident or facility, and (4) diversion of resident or facility drugs, when these acts occur in nursing homes, hospitals, home care agencies, hospices, nursing pools, adult care homes, family care homes, state operated hospitals, and residential facilities and hospitals for the mentally ill, developmentally disabled and substance abusers, by unlicensed assistive personnel (nurses aides) or unlicensed health care personnel (nurse aides, in-home personnel care aides, adult care home personnel care aides or their supervisors). Health care facilities covered by the act are obliged to notify DHHS of all allegations against their personnel which relates to the acts listed above although it was learned by the Committee that there is no penalty if a listed facility does not report an allegation. Any employees who have been accused of such misconduct must also be named in the Registry if DHHS has screened the allegation and determined that an investigation is warranted.

Information from the Health Care Personnel Registry is made available to the general public and all health care providers via Internet and through a 24-hour telephone voice response system. Additionally the Registry provides on-line assistance five days a week during normal business hours as a public service to employers and the general public for inquiries pertaining to the eligibility of an aide to practice in a health care setting in North Carolina.

The Health Care Personnel Registry Section within DHHS was asked to report to the Committee, information about the four questions posed to the Committee contained in Section 3.14 of S.L. 1999-334 and listed in the PREFACE. The Section's Report is contained in Appendix B.

The Report prepared by the Health Care Personnel Registry Section of DHHS suggested that the Committee may wish to consider expanding the health Care Personnel Registry to include all unlicensed personnel who may have direct contact with residents. These may include housekeeping, dietary, and administrative staff. Also consideration might be given to standardizing the reporting requirements for all facilities utilizing the reporting requirements that apply to nursing homes thereby creating a single State standard for all allegations.

Update on Nurse Licensure Compact

S.L. 1999-245 (SB 194) as amended by S.L. 1999-456, Sec.25 created the Nurse Licensing Compact. This interstate compact provides that a license to practice nursing issued by the home state to a resident of that state shall be recognized by each state that is a party to the compact. Key provisions included:

- The establishment of procedures for issuance of licenses by North Carolina.
- The requirement that any nurse whose license has been restricted by the North Carolina Board of Nursing may not practice in another party state until the restriction has been lifted.
- The requirements that the act only apply to nurses whose home states have licensure requirements that are substantially equivalent or more stringent than North Carolina's.

The North Carolina Board of Nursing is directed to report on the Compact to the General Assembly no later than March 1, 2005. Since the Compact currently has only seven states that are party to the Compact, the Committee requested an interim update on certain concerns including:

- What is the role of the North Carolina Board of Nursing in ensuring safe nursing practice as part of the Nursing Compact, specifically for nurses licensed out-of-state, and
- The status of the Coordinated Interstate License Information System.

The Board reported to the Committee on a number of issues related to the Compact. The Report to the Committee is attached as Appendix C. The Committee plans in its future meetings to follow the development of the compact to ensure that the Compact has sufficient information and procedures to protect the public.

Criminal History Record Check for Applicants for Employment in Adult Care Homes

In 1996 the General Assembly enacted legislation mandating criminal history record checks of certain persons applying for employment in an adult care home, nursing home or home care agency. G.S. 131D-40; G.S. 131E-265. These criminal history record check requirements became effective on January 1, 1997 for adult care homes and nursing homes and applied to persons who applied for employment with licensed home care agencies on or after January 1, 1998. Also on or after January 1, 1998 these provisions were extended to applicants for employment with a "contract agency" of an adult care home, nursing home or home care agency.

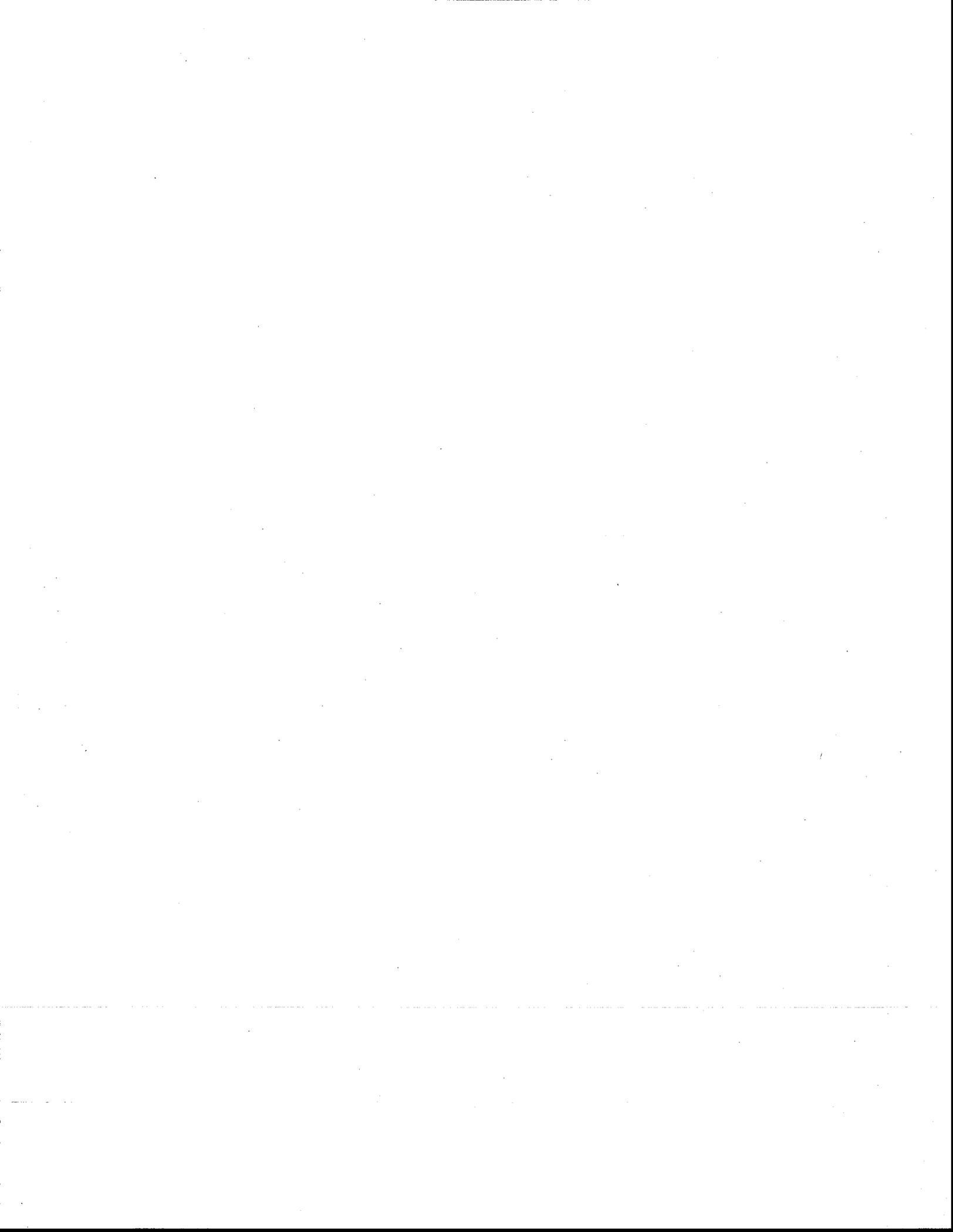
The statutes require that nursing homes, adult care homes, home care agencies or their contract agencies may not employ an individual to fill a position that does not require the applicant to have an occupational license unless the applicant consents to a criminal history check. The agency must submit a request for the check for the applicant to the Department of Justice pursuant to G.S. 114-19.3 within five business days of making a conditional offer. If the criminal history check indicates that the applicant has been convicted of homicide, rape, robbery, kidnapping, assault, or other specified crimes, the agency must consider a number of factors (such as level of seriousness of the crime, the date of the crime, the age of the applicant at the time of conviction, the circumstances surrounding commission of the crime, and the nexus between the criminal conduct and the job duties of the position being filled) to determine whether to hire the applicant. Conviction of a specified offense is not in and of itself a bar to employment.

Section 3.14 of S.L. 1999-234 required the Committee to study whether the requirements and procedures for criminal history record checks on applicants for employment in adult care homes should be strengthened, expanded or changed. Inclusion of the requirement in the legislation was precipitated by newspaper articles and reports that some applicants may have been hired in spite of conviction for more severe criminal activities.

The Committee requested the Department of Justice make a presentation to the Committee based on its experience with processing the criminal record background checks.

The Attorney General suggested the following issues, areas of concern and courses of action for the Committee to study.

- After due process, legislation may need to be considered defining the kind of criminal behavior that warrants disqualification from being hired in nursing homes, adult care homes and home care agencies. Certain crimes may dictate permanent disqualification, disqualification for a certain time with reinstatements after review, or disqualification for a volume of crimes.
- The criminal record check is done only intrastate, not interstate or federal.
- There is no penalty for lying on the application.
- There is no penalty for agencies that violate the statute.
- Many current employees who were hired before the effective date of the statute have not been checked.



FINDINGS AND RECOMMENDATIONS

RECOMMENDATION 1: The Committee recommends that the 1999 General Assembly (2000 Regular Session) require a single state reporting standard for all allegations reported to the Health Care Personnel Registry which would be used by all covered facilities and agencies. All covered facilities and agencies would report using the current standardized reporting requirements that apply to nursing homes. (See Appendix D)

Currently, licensed nursing homes are held to a higher reporting standard than other licensed health care facilities and agencies when reporting to the Health Care Personnel Registry. As a result of federal law, nursing homes are required to immediately report all allegations of resident abuse, neglect or misappropriation of resident property to the Health Care Personnel Registry. They are required to begin an internal investigation of the allegation, take immediate steps necessary to prevent further acts against residents, and complete and notify the Registry the results of their internal investigation within five working days of their initial notification. The Health Care Personnel Registry Act requires all other covered health care facilities and agencies to only report allegations that the facility had investigated and found evidence to a reasonable person standard to be related to one of the provisions covered by law.

The Committee believes that all health care facilities and agencies should be held to the same reporting standards. Therefore, federal nursing home standards should be applied to all facilities and agencies covered by the statute.

RECOMMENDATION 2: The Committee recommends that the 1999 General Assembly (2000 Regular Session) require that facilities and agencies covered by the Health Care Personnel Registry Act that fail to report allegations covered by this law be subject to adverse action. (See Appendix D)

Health care facilities and agencies covered by the Act are obliged to notify DHHS of all allegations against their personnel which relates to the acts listed above although it was learned by the Committee that there is no penalty if a listed facility or agency does not report an allegation. The Committee recommends that language be adopted by the General assembly that gives DHHS the authority to take action against the license of any facility that fails to substantially comply with the provisions of the Act.

RECOMMENDATION 3: The Committee recommends that the 1999 General Assembly (2000 Regular Session) require non-licensed applicants for positions in the adult care home industry to consent to a state and federal criminal background check as a condition of employment. (See Appendix E)

Current law requires unlicensed applicants to consent to a criminal history record check to be eligible for employment in the adult care home industry. An adult care home may not employ an applicant who refuses to consent to a criminal history record check. The criminal history check is conducted by the State Bureau of Investigation (SBI). The current SBI check does not include Department of Motor Vehicle information, records held by the Clerk of Court, criminal histories checks of other states, FBI, or the NC Administrative Office of the Courts. The proposed recommendation will require the check to include a FBI or national check. Department of Motor Vehicle records, records held by the Clerk of Court and the NC Administrative Office of the Courts will continue to not be included.

The Committee believes that in order to ensure the safety and well-being of any person receiving services in adult care home settings, employers must ensure that criminal histories of all employees not regulated by occupational licensing boards are checked for their criminal histories not only in this State but in any state they may have committed crimes.

RECOMMENDATION #4 The Committee recommends that the 1999 General Assembly (2000 Regular Session) that any applicant for employment in the adult care home industry that falsifies their application for employment be subject to criminal prosecution and the imposition of a criminal penalty. (See Appendix E)

Currently North Carolina law does not provide for a penalty for the falsification of an application for employment in the adult care home industry. The Committee believes that in order to ensure the safety and well-being of any person receiving services in adult care home settings, applicants who falsify their applications should be subject to criminal prosecution.

ARTICLE 12M.
Joint Legislative Health Care Oversight Committee.

Sec.

120-70.110. Creation and membership of Joint Legislative Health Care Oversight Committee.

120-70.111. Purpose and powers of Committee.

120-70.112. Organization of Committee.

§ 120-70.110. Creation and membership of Joint Legislative Health Care Oversight Committee.

There is established the Joint Legislative Health Care Oversight Committee. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

(1997-443, s. 22.1(b); 1998-1, s. 2(a).)

Editor's Note. - This section was enacted as § 120-70.96 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.

Session Laws 1998-1, s. 2(b) provides that initial terms of the additional members appointed under this section as amended by s. 2(a) begin upon appointment and shall expire on the convening of the 2001 General Assembly, except if those members are not reelected to serve in the 1999 General Assembly then their terms shall expire upon the convening of the 1999 General Assembly.

Effect of Amendments. - The 1998 amendment, effective May 7, 1998, substituted "16 members" for "14 members" in the introductory language of the first paragraph, and substituted "Eight members" for "Seven members" at the beginning of subdivisions (1) and (2).

§ 120-70.111. Purpose and powers of Committee.

(a) The Joint Legislative Health Care Oversight Committee shall review, on a continuing basis, the provision of health care and health care coverage to the citizens of this State, in order to make ongoing recommendations to the General Assembly on ways to improve health care for North Carolinians. To this end, the Committee shall study the delivery, availability, and cost of

health care in North Carolina. The Committee shall also review, on a continuing basis, the implementation of the State Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. As part of its review, the Committee shall advise and consult with the Department of Health and Human Services as provided under G.S. 108A-70.21. The Committee may also study other matters related to health care and health care coverage in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

(c) The Committee may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to review and monitor, on a continuing basis, the implementation of the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. The Committee shall have access to all records of the Department of Health and Human Services pertaining to the Health Insurance Program for Children and shall be kept apprised by the Department of communications between the Department and the Health Care Financing Administration with respect to development, submission, and approval of and amendments to the State Plan for the Health Insurance Program for Children. The Committee and its employees shall also be entitled to attend all meetings and have access to all records of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan pertaining to the Health Insurance Program for Children that are not confidential in accordance with G.S. 135-37. G.S. 135-37 shall be applicable to the Health Insurance Program for Children to the same extent that is applicable to teachers and State employees.

(1997-443, s. 22.1(b); 1998-1, s. 2(c).)

Editor's Note. - This section was enacted as § 120-70.97 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.

Effect of Amendments. - The 1998 amendment, effective May 7, 1998, in subsection (a) substituted "North Carolinians" for "North Carolinas" in the first sentence and inserted the third and fourth sentences; and added subsection (c).

§ 120-70.112. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Health Care Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

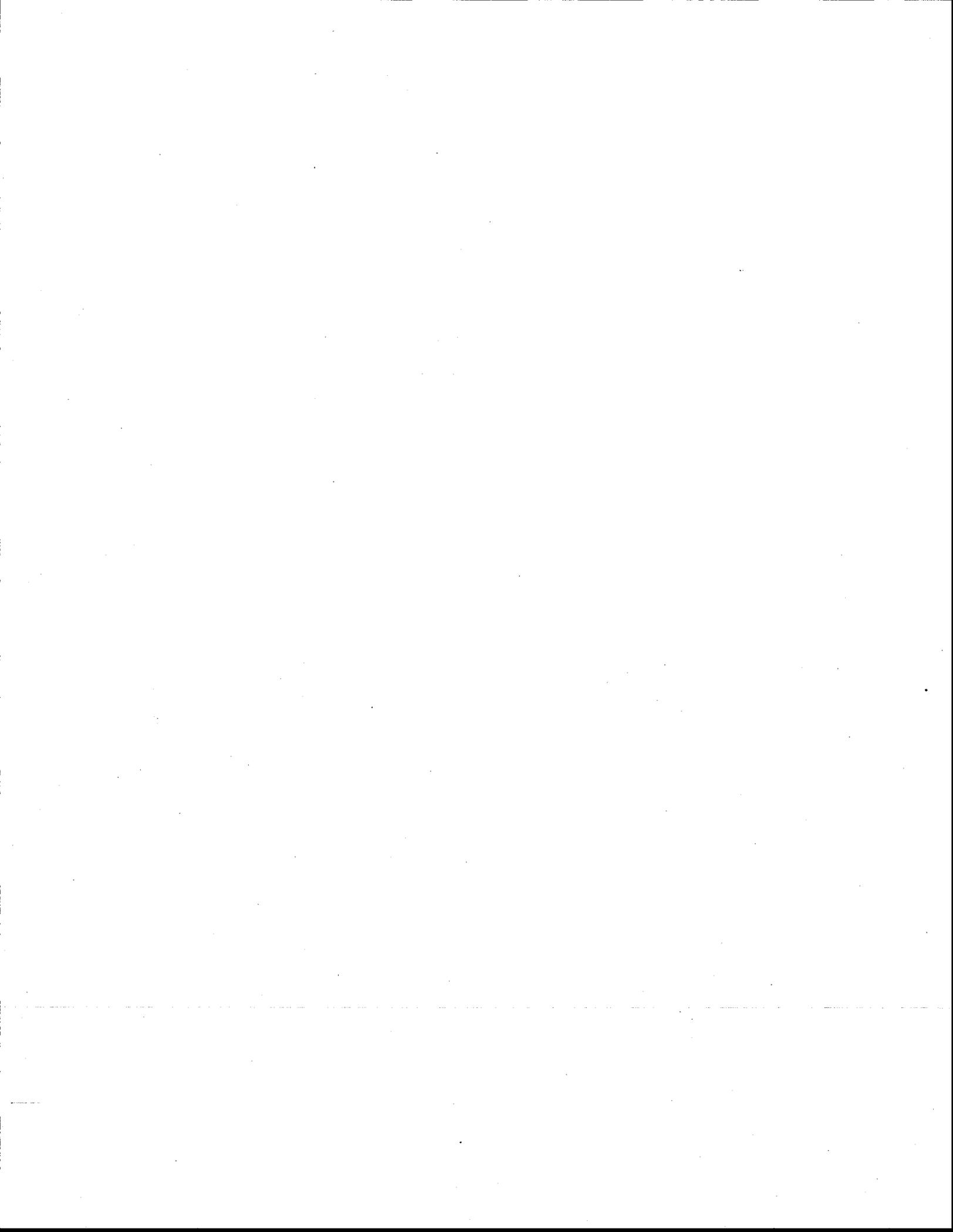
(b) A quorum of the Committee is eight members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the

Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(1997-443, s. 22.1(b).)

Editor's Note. - This section was enacted as § 120-70.98 by Session Laws 1997-443, s. 22.1. It has been recodified at the direction of the Revisor of Statutes.



North Carolina Department of Health and Human Services
Division of Facility Services
Health Care Personnel Registry Section
Nurse Aide Training and Registry Administration
Health Care Personnel Registry Investigations

The Health Care Personnel Registry Section was created in 1996 as a result of legislative action by the North Carolina General Assembly and reorganization within the Division of Facility Services. At that time the responsibilities of the Section were expanded, from having limited regulatory authority for monitoring nurse aides working in nursing homes to include other unlicensed health care personnel working in other types of licensed health care facilities. In 1998 and again in 1999, legislative action broadened the scope of responsibility for the Division and expanded facility reporting requirements.

It is the purpose of the Section to review and determine federal and state compliance of all nurse aide training and competency evaluation programs offered in the state. To improve the quality of care provided the elderly and chronically ill, the Section spearheaded an initiative to develop a competency-based nurse aide training curriculum. The effort was accomplished working in partnership with representatives from the private sector as well as representatives of other state agencies and professional associations. This curriculum is available to all health care providers and serves to facilitate and ensure uniformity and consistency in the training of nurse aides. The North Carolina Community College System Office has adopted this curriculum for use throughout its system in both continuing education and college credit programs.

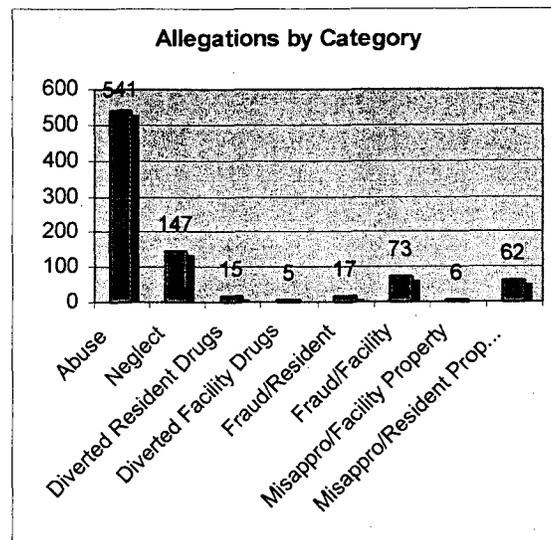
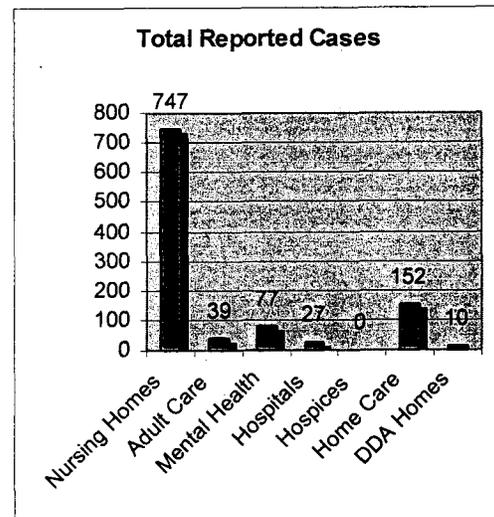
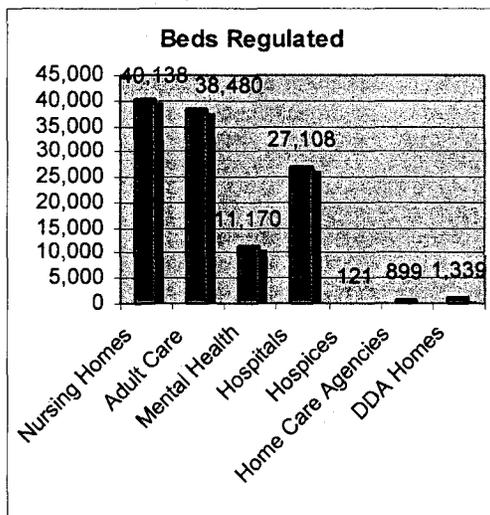
The Section is also responsible for the investigation of all allegations of resident abuse or neglect, misappropriation of resident or facility property, fraud against a resident or facility and diversion of resident or facility drugs when these acts occur in nursing homes, hospitals, home care agencies, hospices, nursing pools, adult care homes, family care homes, state-operated hospitals, and residential facilities and hospitals for the mentally ill, developmentally disabled and substance abusers, by unlicensed assistive personnel (nurse aides) or unlicensed health care personnel (nurse aides, in-home aides, in-home personal care aides, adult care home personal care aides or their supervisors). Further, the Section is responsible for taking administrative action, within the scope of its regulatory authority, against such individuals when it finds one of these acts has occurred.

Tracking and public awareness of unlicensed assistive personnel and unlicensed health care personnel remains a primary mission for the Section. The Section is responsible for providing a registry of all nurse aides who have met federal and state training and competency requirements to perform Nurse Aide I tasks. Additionally, it maintains a listing of unlicensed assistive personnel and unlicensed health care personnel who are being investigated for or have been found to have caused harm to a resident or a facility. These listings are contained on the Nurse Aide I Registry and the Health Care Personnel Registry and may be used by an employer for the purpose of screening prospective applicants for employment or reviewing the employment status of a current employee. Almost all licensed health care facilities are now required to access the Health Care Personnel Registry prior to employing unlicensed assistive and unlicensed health care personnel.

Information from both the Nurse Aide Registry and the Health Care Personnel Registry is made available to the general public and all health care providers via Internet access at www.ncnar.org and through a 24-hour telephone voice response system at (919) 715-0562. Additionally, the Section provides on-line assistance five days a week during normal business hours as a public service to employers and the general public for inquiries pertaining to the eligibility of an aide to practice in a health care setting in North Carolina.

Reporting to the Registry

Reporting allegations of resident abuse, neglect, misappropriation of resident or facility property, fraud against the resident or facility and diversion of resident or facility drugs varies by provider type. Nursing homes have the highest reporting followed by home care agencies, mental health facilities, adult care homes and hospitals. The statistics displayed below give a more detailed picture of the number of licensed facilities by facility/agency type and the type of allegations that are being reported. As one can see, resident abuse is by far the most reported allegation followed by neglect, misappropriation of resident property and fraud against a facility.



The question of why some facilities report more often than others is very hard to answer. It must be pointed out that federal regulations require nursing homes to report all allegations of resident abuse, neglect or misappropriation of resident property and the results of their internal investigations. All other facilities covered by State statute are only

required to report allegations that they substantiate at the end of their internal investigations. Also, nursing homes have had this requirement in place since 1989 while the State statute has been in place for home care agencies, hospitals, adult care homes and hospice agencies since 1996 and all mental health, developmental disability (DD) and substance abuse services (SAS) facilities since 1999. While the above factors may explain some of the disparities, it is believed that there is some under reporting of incidents; however, the Division has no statistics to validate this assumption.

Registry Contact to Verify Registry Information

The Nurse Aide I Registry was created in 1989 for the purpose of listing those individuals who have successfully completed a State-approved Nurse Aide I training and competency evaluation program or a State-approved competency evaluation program. This registry has served many provider groups over the past ten years as the primary resource for information on unlicensed health care staff training. This is reflected in the high volume of contacts the registry has received over the life of its operation. Currently, information from both the Nurse Aide I and Health Care Personnel Registry can be obtained in three different ways.

First, information is available through the Internet at www.ncnar.org. Individual searches will display information contained on both registries. This information can be printed directly from the website and includes a confirmation number for each record searched. Second, information is available 24 hours a day through the Section's telephone voice response system (919-715-0562). Again, confirmation numbers are given for each record searched. Finally, information is available directly from the registry office between the hours of 9:00am and 3:00pm Monday through Friday. The table below illustrates the contact volume by available system for the past two fiscal years and for the current year.

Nurse Aide I and Health Care Personnel Registry System Inquiries			
Date	Voice Response System	WEB Site	Staff Assistance
Fiscal Year 1998	149,577	N/A	83,200
Fiscal Year 1999	155,873	N/A	62,400
Fiscal Year 2000	120,187	8,732*	
*Web access available beginning 01/02/2000			

Information that is contained on these registries includes the following:

Nurse Aide I Registry- The person's name, address, date listed, listing expiration date, training site, and any findings of patient abuse, neglect or misappropriation of resident property in a nursing home.

Health Care Personnel Registry- The names of all unlicensed health care workers who are under investigation by the Division for an allegation covered by the statute in a licensed health care facility or agency and the names of all unlicensed health care workers who

have a substantiated finding of one of these allegations in a licensed health care facility or agency, including those individuals who have findings on the Nurse Aide I Registry.

The table below displays information on the number of individuals that are or have been active aides on the Nurse Aide I Registry and individuals who have substantiated findings or are currently under investigation for one or more allegations. This chart shows two important facts, the first being that the number of inactive aides is growing much faster than the number of active aides and second that the number of aides with findings represents only one percent of the total active aide population.

Nurse Aide I and Health Care Personnel Registries						
Fiscal Year	Nurse Aide I Registry			Health Care Personnel Registry		
	Active Aides	Inactive Aides	Total Aides	Aides with Findings on NAR	Aides with Findings on HCPR*	Aides with Pending Allegations
1998	84,051	82,796	166,847	448	514	
1999	83,442	98,989	182,431	582	748	
2000	84,866	107,079	191,945	631	845	318

*Includes Aides listed on NAR

Expansion of the Registry's Scope

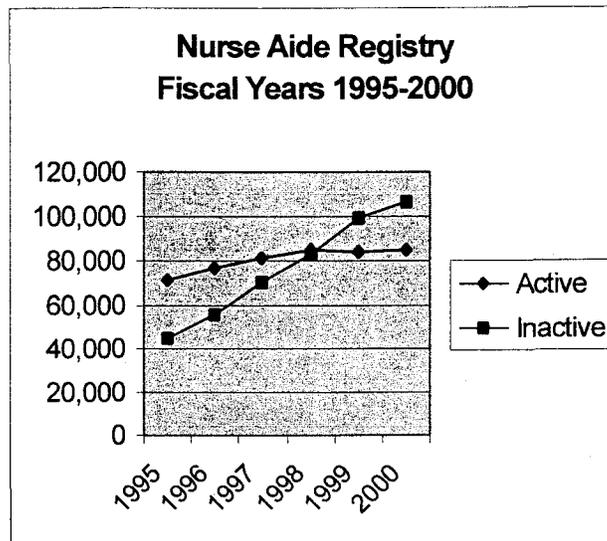
The Registry program has undergone three major expansions over the past four years. In 1996, the General Assembly enacted legislation that created the Health Care Personnel Registry and expanded the Section's investigative authority. In 1998, the General Assembly expanded the program again by including all State-operated and licensed mental health, DD and SAS facilities and in 1999 added the requirement that all licensed health care facilities and agencies, including State-operated mental health facilities, must check the registry prior to hiring unlicensed health care workers. The results of these three expansions were the addition of over 5,500 facilities, seven new types of allegations and three new types of unlicensed personnel under the program's investigative authority.

When looking at further expansion of the Health Care Personnel Registry, consideration should be given to including all other unlicensed personnel that may have direct contact with residents. These may include housekeeping, dietary, and administrative staff. Consideration should also be given to standardizing the reporting requirements for all facilities utilizing the reporting requirements that apply to nursing homes thereby creating a single State standard for all allegations.

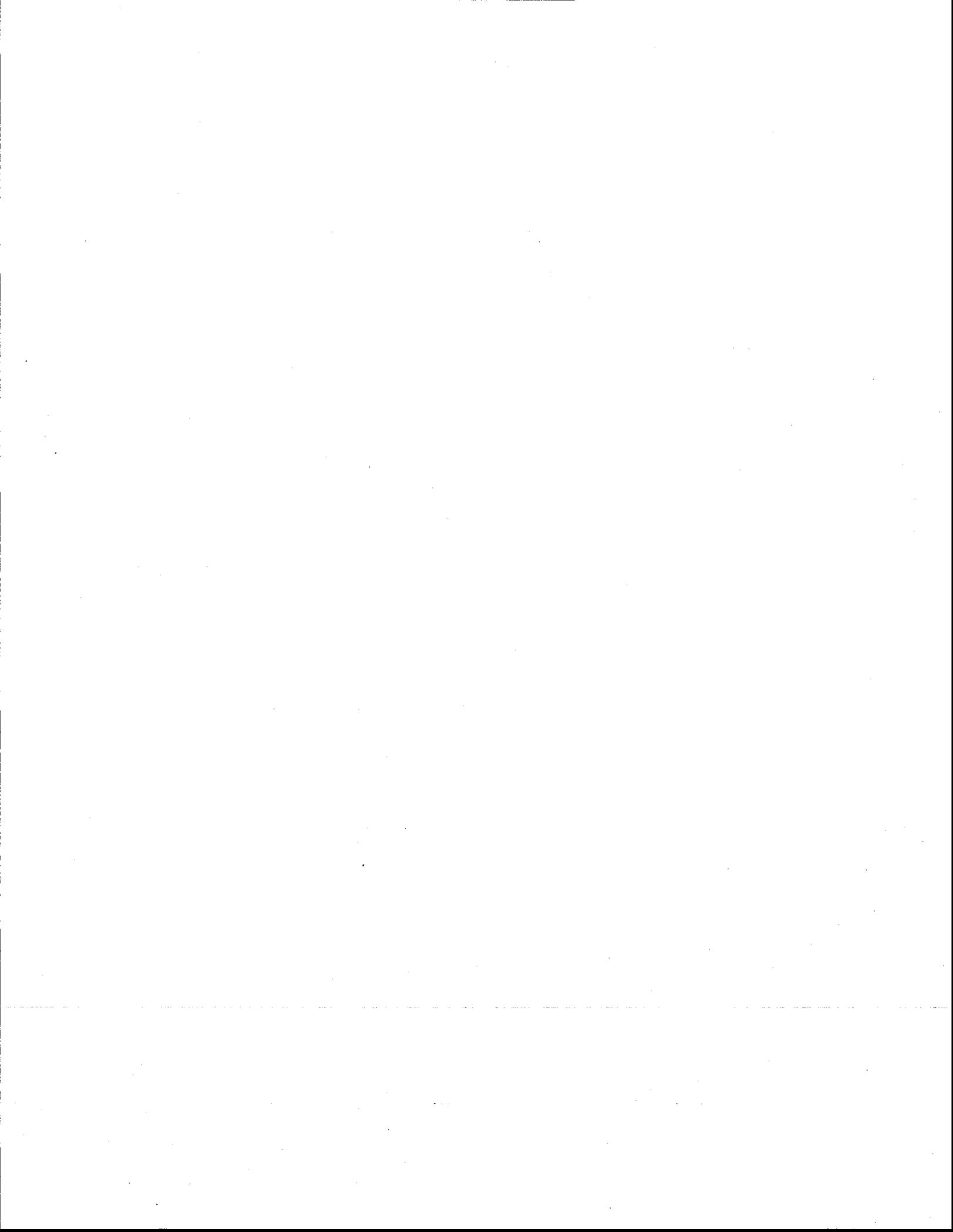
Other Issues

When looking at other issues that relate to the Health Care Personnel Registry, the number one concern is the availability of unlicensed health care workers to staff our State's health care facilities and agencies. These staff are responsible for the provision of over 90% of all hands-on care in the long-term care industry, and it is becoming more and more difficult for providers to find qualified persons to meet this need. The chart below provides a very clear picture of this trend, which has reached the critical state for

many members of the health care industry in North Carolina and the nation. Making this situation even worse is the fact that projections show a need for more than 20,000 new unlicensed health care workers over the next five years.



The Department is currently working in cooperation with representatives of the long-term care industry, the University of North Carolina and the Kate B. Reynolds Foundation to study the issues surrounding the recruitment and retention of unlicensed health care workers. It is hoped that this effort will lead to the development of a comprehensive approach that will include wage incentives, enhanced training and educational opportunities and a career ladder for the unlicensed health care workforce.



NC Board of Nursing Report to Joint Legislative Health Care Oversight Committee

1. Nurse Licensure Compact Update:

- Implementation date for North Carolina is July 1, 2000 (10 states have enacted the Compact as of 4/24/00)
- Compact Rules (21 NCAC 36.0701-.0705) approved by RRC 3/16/99
- Public Access to licensure information includes:
 - ⇒ Name, jurisdiction, expiration date, classification; emergency and final disciplinary actions; and status of multistate licensure privileges.
- Compact state licensing boards have access to current significant investigative information
- Compact limits the practice of nurses with encumbered licenses to the home state or in remote state with approval of both home and remote state licensing boards
- Nurses with unencumbered licenses from other compact states not required to contact NC Board when practicing in NC
- Educational initiative for compact implementation for nurses and employers in process

2. Public Access to Disciplinary Information through Board of Nursing*:

- **Automated Licensure Verification System** (via telephone and internet); database updated @ close of each business day
 - ⇒ verifies licensure status of individuals with unencumbered, active licenses
- **Licensees with current disciplinary action or Letter of Charges**
 - ⇒ not verified on automated system; inquirer directed to call Board office
 - ⇒ must call Board office to speak with a professional staff member for further information on disciplinary status
- **Licensees with disciplinary history**
 - ⇒ information of any past actions only available from Board upon request
 - ⇒ once license returns to unencumbered status, may be verified via automated system

*NOTE: Board holds employer accountable for assuring that all nurse employees are currently licensed to practice in North Carolina

3. Access to Disciplinary Information at National Level:

- **Coordinated Licensure Information System – NURSIS***: a national system developed by the National Council of State Boards of Nursing that includes:
 - ⇒ a Disciplinary Data Bank of actions taken against nurses by all state boards of nursing since 1992 – available to all state boards of nursing

- ⇒ basic licensure information and notation of disciplinary history for nurses licensed in all states enacting the Nurse Licensure Compact – available to all boards of nursing and to become available to the public in near future;
- ⇒ notification of current significant investigative information of licensees in Compact states – restricted to boards of Compact states.

***NOTE: Long range goal is for all nurse licensing boards to submit basic licensure information to NURSYS in order to build a single national licensure record for each licensee.**

- **Healthcare Integrity and Protection Data Bank (HIPDB)** – a national collection program created by the Health Care Quality Improvement Act of 1996 for reporting and disclosure of certain final adverse actions taken against health care providers, suppliers, or practitioners; managed by HRSA, DHHS. – Reporting required by federal and state agencies including health licensing agencies. Information accessible to health care entities, state and federal agencies.

3. Future Plans for Public Protection and Public Access to Licensure Information:

At state level:

- 1) Seek statutory authority to:
 - Require mandatory Criminal Background Checks for all applicants for initial nursing Licensure in North Carolina. (Target = 2001 Legislative Session)
 - Establish time bars for applicants with felony convictions.
 - Require all employers of nurses to electronically verify licensure status prior to employment and annually thereafter.
- 2) Add notation of disciplinary action/history to basic licensure information available to public via the Board's website and automated telephone verification system.

At national level:

- 1) Support public access to the Coordinated Licensure Information System (NURSYS) for licensure verification and notice of discipline history for nurses licensed in other jurisdictions.

Report by: Polly Johnson, MSN, RN
Executive Director
North Carolina Board of Nursing
April 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S/H

D

99-LNZ-227(5.01.00)

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Health Care Registry Reports.

Public

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STANDARDIZE REPORTING REQUIREMENTS FOR HEALTH CARE
3 PERSONNEL REGISTRY, AND TO ALLOW ADVERSE ACTION ON A FACILITY
4 LICENSE FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 131E-256(g) reads as rewritten:
7 "(g) ~~Upon investigation and documentation, health~~ Health care
8 facilities shall ensure that the Department is notified of all
9 substantiated allegations against health care personnel
10 personnel, including injuries of unknown source, which appear to
11 a reasonable person to be related to any act listed in
12 subdivision (a)(1) of this section, and shall promptly report to
13 the Department any resulting disciplinary action, demotion, or
14 termination of employment of health care personnel. section.
15 Facilities must have evidence that all alleged acts are
16 investigated, and must prevent further potential acts while the
17 investigation is in progress. The results of all investigations
18 must be reported to the Department within five working days of
19 the initial notification to the Department."
20 Section 2. Article 15 of Chapter 131E of the General
21 Statutes is amended by adding the following new section to read:
22 "§ 131E-256.1. Adverse action on a license; appeal procedures.



HEALTH CARE REGISTRY REPORTS

BILL ANALYSIS

Committee: Joint Legislative Health Care
Oversight
Date: May 1, 2000
Version: DRAFT

Introduced by:
Summary by: Linda Attarian
Committee Counsel

SUMMARY: *The act amends the health care personnel registry reporting requirements to require certain health care facilities to report to the Department of Health and Human Services (DHHS) all allegations, not just substantiated allegations, against certain health care personnel of patient neglect or abuse, misappropriation of patient or facility property, diversion of patient or facility drugs, and fraud against a patient or facility. The act also requires the facility, law enforcement or other entity to investigate all alleged acts. The facility must report the results of the investigation to DHHS within five working days of the initial notification of the allegation to the Department. Failure to comply with these new reporting requirements or other requirements of the health care personnel registry law could result in the suspension, cancellation or amendment of the facility's license. The act would become effective on October 1, 2000.*

CURRENT LAW: Nursing homes are required by State law and federal regulation to report to the Department of Health and Human Services (DHHS) ALL allegations of patient neglect or abuse, misappropriation of patient or facility property, diversion of patient or facility drugs, and fraud against a patient or facility. Adult care homes and certain other facilities that provide hands on, paraprofessional personal care to the elderly or disabled are subject to State law only, which requires that they report to DHHS such incidents only after an internal investigation has substantiated the allegation. Nursing homes and adult care homes are required by State law to report to DHHS any resulting disciplinary action, demotion, or termination of employment. Penalty provisions exist in current law for nursing homes that fail to make the required reports. No such penalties currently exist for adult care homes and other facilities subject to the health care personnel registry law.

BILL ANALYSIS: Section 1 amends G.S. 131E-256(g) to require health care facilities defined in G.S. 131E-256(b) to report to the Department of Health and Human Services (DHHS) all allegations, not just substantiated allegations, against health care personnel defined in G.S. 131E-256(c), of patient neglect or abuse, misappropriation of patient or facility property, diversion of patient or facility drugs, and fraud against a patient or facility. The section also requires the facility to have evidence that all alleged acts are investigated, and requires the facility to report the results of all investigations to DHHS within five working days of the initial notification to the Department.

Section 2 adds a new section to Article 15 of Chapter 131E to provide DHHS authorization to suspend, cancel or amend a facility's license for substantial failure to comply with the requirements of the health care personnel registry.

Section 3 makes the act effective on October 1, 2000 if the bill is enacted.

1 request, the fingerprints of the individual to be checked, any
2 additional information required by the Department of Justice, and
3 a form signed by the individual to be checked consenting to the
4 check of the criminal record and to the use of fingerprints and
5 other identifying information required by the State or National
6 Repositories. The fingerprints of the individual shall be
7 forwarded to the State Bureau of Investigation for a search of
8 the State's criminal history record file, and the State Bureau of
9 Investigation shall forward a set of fingerprints to the Federal
10 Bureau of Investigation for a national criminal history record
11 check. All information received by the entity shall be kept
12 confidential in accordance with G.S. 131E-265 and G.S. 131D-40,
13 as applicable. The Department of Justice shall charge a
14 reasonable fee for conducting the checks authorized by this
15 section. The fee for the State check may not exceed fourteen
16 dollars (\$14.00)."

17 Section 2. (a) Subsections (a) and (a1) of G.S. 131D-40
18 read as rewritten:

19 "(a) Requirement; Adult Care Home. -- An offer of employment
20 by an adult care home licensed under this Chapter to an applicant
21 to fill a position that does not require the applicant to have an
22 occupational license is conditioned on consent to a criminal
23 history record check of the applicant. An adult care home shall
24 not employ an applicant who refuses to consent to a criminal
25 history record check required by this section. An adult care
26 home shall submit a request to the Department of Justice under
27 ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a criminal history record
28 check within five business days of making the conditional offer
29 of employment. All criminal history information received by the
30 home is confidential and may not be disclosed, except to the
31 applicant as provided in subsection (b) of this section.

32 (a1) Requirement; Contract Agency of Adult Care Home. -- An
33 offer of employment by a contract agency of an adult care home
34 licensed under this Chapter to an applicant to fill a position
35 that does not require the applicant to have an occupational
36 license is conditioned upon consent to a criminal history record
37 check of the applicant. A contract agency of an adult care home
38 shall not employ an applicant who refuses to consent to a
39 criminal history record check required by this section. A
40 contract agency of an adult care home shall submit a request to
41 the Department of Justice under ~~G.S. 114-19.3~~ 114-19.10 to
42 conduct a criminal history record check within five business days
43 of making the conditional offer of employment. All criminal
44 history information received by the contract agency is

1 confidential and may not be disclosed, except to the applicant as
2 provided by subsection (b) of this section."

3 Section 2. (b) G.S. 131D-40 is amended by adding the
4 following new subsection to read:

5 "(e) Penalty for furnishing false information. -- Any
6 applicant for employment who willfully furnishes, supplies, or
7 otherwise gives false information on an employment application
8 that is the basis for a criminal history record check under this
9 section shall be guilty of a Class A1 misdemeanor."

10 Section 2. (c) Subsections (a) and (a1) of G.S. 131E-265
11 read as rewritten:

12 "(a) Requirement; Nursing Home or Home Care Agency. -- An
13 offer of employment by a nursing home licensed under this Chapter
14 to an applicant to fill a position that does not require the
15 applicant to have an occupational license is conditioned on
16 consent to a criminal history record check of the applicant. An
17 offer of employment by a home care agency licensed under this
18 Chapter to an applicant to fill a position that requires entering
19 the patient's home is conditioned on consent to a criminal
20 history record check of the applicant. In addition, employment
21 status change of a current employee of a home care agency
22 licensed under this Chapter from a position that does not require
23 entering the patient's home to a position that requires entering
24 the patient's home shall be conditioned on consent to a criminal
25 history record check of that current employee. A nursing home or
26 a home care agency shall not employ an applicant who refuses to
27 consent to a criminal history record check required by this
28 section. In addition, a home care agency shall not change a
29 current employee's employment status from a position that does
30 not require entering the patient's home to a position that
31 requires entering the patient's home who refuses to consent to a
32 criminal history record check required by this section. A nursing
33 home or home care agency shall submit a request to the Department
34 of Justice under G.S. ~~114-19.3~~ 114.19.10 to conduct a criminal
35 history record check within five business days of making the
36 conditional offer of employment. All criminal history information
37 received by the home or agency is confidential and may not be
38 disclosed, except to the applicant as provided in subsection (b)
39 of this section.

40 (a1) Requirement; Contract Agency of Nursing Home or Home Care
41 Agency. -- An offer of employment by a contract agency of a
42 nursing home or home care agency licensed under this Chapter to
43 an applicant to fill a position that does not require the
44 applicant to have an occupational license is conditioned upon

1 consent to a criminal history record check of the applicant. A
2 contract agency of a nursing home or home care agency shall not
3 employ an applicant who refuses to consent to a criminal history
4 record check required by this section. A contract agency of a
5 nursing home or home care agency shall submit a request to the
6 Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a
7 criminal history record check within five business days of making
8 the conditional offer of employment. All criminal history
9 information received by the contract agency is confidential and
10 may not be disclosed, except to the applicant as provided by
11 subsection (b) of this section."

12 Section 2. (d) G.S. 131E-265 is amended by adding the
13 following new subsection to read:

14 "(e) Penalty for furnishing false information. - Any applicant
15 for employment who willfully furnishes, supplies, or otherwise
16 gives false information on an employment application that is the
17 basis for a criminal history record check under this section
18 shall be guilty of a Class A1 misdemeanor."

19 Section 3. G.S. 114-19.3(a) reads as rewritten:

20 "(a) Authority. -- The Department of Justice may provide to
21 any of the following entities a criminal record check of an
22 individual who is employed by that entity, has applied for
23 employment with that entity, or has volunteered to provide direct
24 care on behalf of that entity:

- 25 (1) Hospitals licensed under Chapter 131E of the
26 General Statutes.
- 27 ~~(2) Nursing homes or combination homes licensed under~~
28 ~~Chapter 131E of the General Statutes.~~
- 29 ~~(3) Adult care homes licensed under Chapter 131D of the~~
30 ~~General Statutes.~~
- 31 ~~(4) Home care agencies or hospices licensed under~~
32 ~~Chapter 131E of the General Statutes.~~
- 33 (5) Child placing agencies licensed under Chapter 131D
34 of the General Statutes.
- 35 (6) Residential child care facilities licensed under
36 Chapter 131D of the General Statutes.
- 37 (7) Hospitals licensed under Chapter 122C of the
38 General Statutes.
- 39 (8) Area mental health, developmental disabilities, and
40 substance abuse authorities licensed under Chapter
41 122C of the General Statutes, including a contract
42 agency of an area authority that is subject to the
43 provisions of Article 4 of that Chapter.

1 (a) The Department may suspend, cancel, or amend a license when
2 a facility subject to this Article has substantially failed to
3 comply with this Article or rules adopted under this Article.

4 (b) Administrative action taken by the Department under this
5 section shall be in accordance with Chapter 150B of the General
6 Statutes."

7 Section 3. This act becomes effective October 1, 2000.

8



CRIMINAL RECORD CHECKS/LONG TERM CARE

BILL ANALYSIS

Committee: Joint Legislative Health Care
Oversight
Date: May 1, 2000
Version: DRAFT

Introduced by:
Summary by: Linda Attarian
Committee Counsel

SUMMARY: *The act would amend current law to require employers in the long term care industry to request state and national criminal background checks of all consenting applicants for positions of employment that do not require the applicant to have an occupational license. The act also makes it a Class A1 misdemeanor for falsifying an employment application.*

CURRENT LAW: Applicants for positions in the long term care industry (nursing homes, adult care homes, and home care/hospice) that do not require the applicant to have an occupational license must consent to a criminal history check in order to be hired. For each applicant that consents to a criminal background check, employers are required to submit a request to the Department of Justice under G.S. 114-19.3. G.S. 114-19.3 currently authorizes the Department of Justice to provide certain entities with a criminal background check. The Department is not currently authorized under that statute to forward the fingerprint to the FBI for a national criminal background check. The criminal background checks provided by the State include a search of fingerprint records of convictions (typically felonies) of crimes committed in North Carolina. The check does not include a search of DMV information, Clerk of Court records, criminal records held in other states, or records held by the Administrative Office of the Courts. The cost of the State criminal record check based on a person's fingerprint is \$14.00.

BILL ANALYSIS: Section 1 amends Article 4 of Chapter 114 of the General Statutes to add a new section authorizing the Department of Justice to conduct a criminal background check of fingerprint records held in North Carolina and to forward fingerprints of the applicant to the FBI for a national criminal history check that would find convictions of crimes in other states. The cost of the additional FBI check is \$24.00

Section 2(a) makes a conforming amendment G.S. 131D-40, pertaining to criminal record check requirements of applicants for certain positions in adult care homes.

Section 2(b) amends G.S. 131D-40 to add a penalty (Class AI misdemeanor) for the falsification of an employment application for applicants for all positions in adult care homes.

Section 2(c) makes a conforming amendment to G.S. 131E-265, pertaining to criminal history record check requirements of applicants for certain positions in nursing homes or home care agencies.

Section 2(e) amends G.S. 131E-256 to add a penalty (Class AI misdemeanor) for the falsification of an employment application for applicants for all positions in nursing homes or home care agencies.

Section 3 makes conforming amendments to G.S. 114-19.3.

Section 4 makes the act effective December 1, 2000.

